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ABSTRACT

This special issue opens with an article by Franklyn S. Haiman, "The Fighting Word Doctrine: From Chaplinsky to Brown," in which he reviews the problem of the use of "fighting words" in public situations. He discusses this type of communication as one that borders individual and collective rights, and provides background information on significant Supreme Court decisions in the free speech area. In the second article, "Leadership and Language," Marvin D. Jensen contends that present crises in leadership arise from our current language usages which do not contribute to real communication. In the final article, "How Do You Tell the Good Guys From the Bad Guys," Ruth Johnston Laws presents an examination of the effects of television on American voter behavior. She examines the changes in campaign planning and strategy because of television, the altered behavior of the candidates in response to the public, and the altered response of the public to the candidates. (Author/RN)

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CONTENTS

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Editor's Foreword

Franklyn S. Haiman is so well known for his work in freedom of speech that a major article from his hand dealing with that subject merits the attention of speech professionals. That is what has motivated the Iowa Communication Association to publish this edition of the Iowa Journal of Speech on a much larger scale than usual, and to make copies available to SCA members attending the national convention, December, 1972.

Dr. Haiman has provided an excellent review of and commentary on the perplexing problem of the use of "fighting words" in public situations. This particular mode of speech, with its social, legal and political implications, needs to be of concern to speech professionals precisely because it lies on that uncertain border between individual and collective rights. Dr. Haiman's analysis illuminates this area and provides important background understanding for an anticipated new Supreme Court ruling on this matter.

The second article in this special edition, "Leadership and Language", by Marvin D. Jensen, calls our attention to the crucial relationship between language and leadership. In these days of uncertain leadership and questionable "canned" inspirational rhetoric, Mr. Jensen's discussion seems highly appropriate.

Finally, Mrs. Ruth Johnston Laws presents a timely, probing examination of the impact of television on American voter behavior.

The editor is confident that speech professionals will both enjoy reading and find much useful information in all three of these articles.

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The Fighting Words Doctrine:

From Chaplinsky to Brown

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THE FIGHTING WORDS DOCTRINE: FROM CHAPLINSKY TO BROWN

On April 11, 1971, nineteen-year old Robert Vitek of Shaker Heights, Ohio, was stopped and arrested for speeding by University Heights Police Sergeant Jay McKenna. While the officer was filling out his ticket, Vitek called McKenna a "pig." Judge Manuel Rocker of the Shaker Heights Municipal Court later found Vitek guilty of abusing a police officer, fined him $[illegible], and sentenced him to spend three hours in a pigsty so that he might learn to "dintinguish the difference between a pig and a policeofficer."[1] Since the young man in question apparently was not discontented with his sentence, his incident did not become a contested freedom of speech case. Indeed, Vitek told the press, "I don't think the Court could have made a better decision.... I'm no hippie radical. I learned a lesson and I'm glad I got the opportunity to go."[2]

Many citizens, however, who have been involved in controversies over the use of such colorful language, directed either at policemen or at other audiences, have not been so docile afterwards; and their cases have, indeed, become the basis of significant civil liberties litigation. Some of these cases have ultimately led to United States Supreme Court decisions which define the extent to which overheated rhetoric is protected by the First and Fourteenth Amendments to our Constitution.

The earliest landmark in this field was a unanimous opinion of the Supreme Court in 1942 in the case of *Chaplinsky v. New Hampshire*. Chaplinsky was a member of the Jehovah's Witnesses who was passing out the literature of his sect on the streets of Rochester, New Hampshire, on a busy Saturday afternoon. A number of citizens complained to the police that Chaplinsky was denouncing all religion as a "racket" and should be made to stop. At first the police responded by correctly informing these citizens that Chaplinsky had a legal right to pass out his leaflets. But later, after a disturbance had occurred, he was warned to stop and, upon refusal, was placed under arrest. Thereupon, he said to the arresting officer, "You are a God damned racketeer" and "a damned Fascist and the whole government of Rochester are Fascists or agents of Fascists."[3]

Chaplinsky was found guilty in Rochester Municipal Court of violating a New Hampshire law which made it illegal to "address any offensive, derisive or annoying words to any other person who is lawfully in any street or other public place, nor call him by any offensive or derisive name..."[4] The Supreme Court of New Hampshire sustained the conviction, rejecting the argument that enforcement of this statute constituted a violation of the freedom of speech clause of the Constitution. The New Hampshire court maintained that the purpose of the law was to preserve the public peace and that speech was not forbidden unless it had a "direct tendency to cause acts of violence by the persons to whom, individually, the remark is addressed."[5] The court went on to construe the state statute as follows:

> *The word "offensive" is not to be defined in terms of what a particular addressee thinks... The test is what men of common intelligence would understand would be words likely to cause an average addressee to fight... The English language has a number of words and expressions which by general consent are "fighting words" when said without a disarming smile.... such words, as ordinary men know, are likely to cause a fight. So are threatening, profane, or obscene revilings. Derisive and annoying words can be taken as coming within the purview of the statute as heretofore interpreted only when they have this characteristic of plainly tending to excite the addressee to a breach of the peace.*[6]

The justices of the United States Supreme Court found no fault with this rationale of New Hampshire's highest court. Indeed, they elevated its "fighting words" doctrine into the law of the land with this historic interpretation of the First and Fourteenth Amendments, written for the Court by Justice Frank Murphy:

> *Allowing the broadest scope to the language and purpose of the Fourteenth Amendment, it is well understood that the right of free speech is not absolute at all times and under all circumstances. There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting words" -- those which by their very utterance inflict injury or tend to incite an immediate*

breach of the peace. It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.[7]

A surprising feature of the *Chaplinsky* opinion was the absence of any dissent, despite the fact that Justices Hugh Black and William Douglas were already members of the Court at that time. Justice Black, in particular, was noted for his oft-repeated view that when the Founding Fathers wrote that "Congress shall make no law... abridging the freedom of speech," they meant literally *no law*, including any limitations on libel or obscenity. Piqued by curiosity as to how that position might be reconciled with *Chaplinsky*, this writer addressed the following inquiry to the late Justice Black: "As I study the opinions which you have written over the years in First Amendment cases, I find in them no clue that would suggest a rationale for your having acceded to the Chaplinsky decision. On the contrary, if I understand correctly the position you have consistently taken, I would have predicted that Justice Murphy's opinion would have evoked one of your most vigorous dissents.

"Would you be able to recall your thinking at the time and be willing to unravel this puzzle for me?"[8]

The response was something less than enlightening and the solution to the mystery has, unhappily, now been taken to the grave: "I have just received your letter asking why there was no dissent in the case of *Chaplinsky v. New Hampshire*, 315 U.S. 568. Besides the fact that that case was decided twenty-two years ago, it would hardly be proper for me to discuss reasons that may have been responsible for the decision. I suppose you will just have to guess."[9]

Although the paragraph last quoted from the *Chaplinsky* decision above has been cited many times by the Supreme Court during the past three decades as precedent for major decisions in the areas of libel, obscenity, and disorderly conduct,[10] the Court had no occasion during the first twenty-nine of these thirty years since *Chaplinsky* to call upon that

decision in a situation involving "fighting words" themselves. It was not until June of 1971 that the Supreme Court justices decided a case in which their contemporary attitude toward the "fighting words" doctrine was to be revealed, and then it occurred somewhat tangentially, as we shall see shortly. Meanwhile, the emergence of a counter-culture in our society had made the use of provocative language more commonplace, and a number of other jurisdictions had found it necessary to address the issue. A sampling of their reactions provides an interesting backdrop to the Supreme Court's oblique confrontation with the problem in 1971 and its more recent and more definitive pronouncements in March and June of 1972.

In February, 1968, for example, it was reported that the Attorney General of the State of Utah had issued an opinion stating that a Salt Lake City ordinance which prohibited "verbal abuse" of police and firemen was an inconstitutional infringement of freedom of speech.[11] The following month, in Chicago, a federal district judge ruled in favor of two citizens, Essie Wells and Donald Weatherall, who had been arrested during a "tent-in" protesting housing conditions on the City's West Side. Testimony had been presented to the effect that Ms. Wells and Mr. Weatheral had quarreled with the police and screamed obscenities at them when officials attempted to secure removal of the tents. Federal Judge Hubert Will said that "swearing at police is not a violation of the law," and noted that he, himself, had quarreled with police officers on several occasions.[12]

Apparently tolerance for verbal diatribes against the police has not been as great in the state of Ohio as in Utah or Illinois. In addition to the Shaker Heights episode reported earlier, the City of Toledo passed a new ordinance in 1970 prohibiting verbal abuse of law enforcement officials. The city's Safety Director thereupon ordered arrests of anyone calling policement "pigs," or making noises at them such as "oink, oink."[13]

In Washington, D. C., an event that had occurred in November of 1965 is of considerably greater significance than those described thus far because of its ultimate adjudication by a nine-judge panel of the United

States Circuit Court of Appeals for the District of Columbia. It all began one Saturday night in front of a laundromat in the 2700 block of 14th Street N.W., a congested area where many people were milling on the sidewalks. The manager of the laundromat, a man by the name of Williams, was standing in front of his place of business conversing with a group of four friends. Two police officers who came by, believing that the group was blocking the free flow of pedestrian traffic on the sidewalk, told the men to move on. After walking a couple of hundred feet farther on, the officers looked back and noticed that the group had not dispersed. They returned and again told the men they would have to move. All but Williams obeyed the command. Williams, however, said that he was not going to go anywhere, that he was the manager of the laundromat, and "no God damn policeman" and "no son of a bitch" was going to make him move. When Williams' wife came out of the laundromat to urge her husband to come inside, he moved toward the door. However, while still outside on the sidewalk he said to the officer, "I dare you to lock my God damn ass up." The dare was accepted, Williams was arrested, and he was found guilty in the trial court of violating Section 22-1107 of a District of Columbia disorderly conduct statute which makes it illegal for any person, in public, "to curse, swear, or make use of any profane language or indecent or obscene words."[14] The conviction was sustained by the District of Columbia Court of Appeals, and also by a 3-judge panel of the United States Circuit Court of Appeals for the District of Columbia. The American Civil Liberties Union of the National Capital Area, which was handling the litigation for Williams, then requested and was granted a re-hearing before all nine judges of the Circuit Court of Appeals, sitting *en banc*. In a 5-4 decision, that Court reversed the conviction.

The various views expressed in the Williams case are worth pausing to examine at this point. Williams' lawyers had argued before the D.C. Court of Appeals that although Section 1107 of the disorderly conduct statute addressed itself only to the utterance of certain kinds of words, other sections of the statute qualified the reach of the law so as to make it applicable only "under circumstances such that a breach of the peace may be occasioned" by the behavior in question. Since Williams' speech did not occur in circumstances that would lead to a breach of the peace, his lawyers maintained that Section 1107 had been misapplied.

The D.C. Appeals Court did not agree. It held that since Section 1107 itself made no mention of breach of the peace, but simply provided that it is unlawful to use profane language "in any place wherefrom the same may be heard," the conviction was valid. The Court noted that "profane language has never been entitled to protection under the First Ammendment."[15]

The 3-judge panel of the United States Circuit Court of Appeals, though affirming the judgment of the D.C. Court of Appeals, took a different view of the case. It found that the original charge against Williams as well as the trial court's judgement had included the proviso that the profane words were used "under circumstances such that a breach of the peace may be occasioned" and that it was therefore unnecessary for the appellate court to address the question of whether a coniction could be sustained in the absence of such circumstances.[16]

The 5-man majority of the full United States Circuit Court of Appeals, in reversing all of the earlier rulings, held that Section 1107 was unconstitutional *unless* construed to require something more than the mere utterance of profane language in public. Unlike its 3-judge panel, the full Court majority felt that the "something more" had not been properly alleged or found in the trial proceedings, and that Williams' conviction, therefore, could not stand. The majority said, "That portion of Section 1107 which makes it illegal for any person 'to curse, swear, or make use of any profane language or indecent or obscene words' is on its face extraordinarily broad, so broad in fact that it would allow punishment of the hapless stonemason who, after crushing his toe, innocently utters a few relieving expletives within earshot of a public place."[17]

Having exonerated Williams, the Court majority then proceeded, through a discussion of their understanding of the *Chaplinsky* decision, to limit rather sharply any possible over-extensions of their *Williams* opinion. Having pointed out that, in *Chaplinsky*, "the United States Supreme Court showed that the state had a legitmate interest in punishing profane or obscene words spoken in public under circumstances which created a substantial threat of violence,"[18] the opinion added still another consideration allegedly derived from *Chaplinsky*:

Apart from punishing profane or abscene words which are spoken in circumstances which create a threat of violence, the state may also have a legitimate interest in stopping one person from "inflicting injury" [Footnote to Chaplinsky v. New Hampshire, 315 U.S. at 572] on others by verbally assaulting them with language which is gorssly offensive because of its profane or obscene character. The fact that a person may constitutionally indulge his taste for obscenities in private does not mean that he is free to intrude them upon the attentions of others.... We therefore conclude that Section 1107 would not be invalid if ... interpreted to require an additional element that the language be spoken in circumstances which threaten a breach of the peace. And for these purposes a breach of the peace is threatened either [underlining added] because the language creates a substantial risk of provoking violence, or because it is, under "contemporary community standards," so grossly offensive to members of the public who actually overhear it as to amount to a nuisance.[19]

There is clearly a basis for this interpretation of *Chaplinsky* in the phrase from Justice Murphy's opinion, quoted earlier, which defines "fighting words" as "those which by their very utterance inflict injury or [italics added] tend to incite an immediate breach of the peace. The use of the disjunctive "or" would certainly suggest that the *Chaplinsky* Court had two different categories in mind.

Whether or not there is any significance to the fact that most of the incidents of "fighting words" which have gone to court have involved speech addressed to policemen will be left to the reader to judge. We turn our attention, now, however, to two cases involving different kinds of audiences -- each culminating in a result quite opposite to the other.

The first case had its inception on January 7, 1969, in the Student Union Building of Kansas State University at Manhattan, Kansas, near a table being used for the recruitment of officers by the Marine Corps. Two men, Franklin Cleveland and Andrew Rollins, were found guilty of disturbing the peace as a result of some words they addressed to Corporal Michael Huston, the Marine recruiter at the table, which were also overheard by about twenty young men and women in the vicinity. The Supreme Court of Kansas, in upholding the conviction, gingerly described the speech in question:

They engaged Huston in conversation by asking him questions and then interrupted his answers. In the course of the dialogue Huston was called a killer, a mercenary and a prostitute. However, that language was mild, indeed, compared to that which was spoken generally.... We are of the opinion that the lewd and indecent language which referred to motherhood in the most obscene and shocking manner, and the profane and perverted language addressed to the marines, the flag and the President of the United States, all in a loud voice, did disturb the feeling of tranquility of the young men and women in the lobby of the Student Union Building.[20]

In response to the appellant's claim that a conviction for this behavior violated the freedom of speech clause of the First Amendment because "the facts and circumstances were lacking any provocation of violence or disorder, and clear and present danger is not evident,"[21] the Kansas Supreme Court ruled:

We would state that neither the Constitution of the United States nor the Constitution of the State of Kansas is a license to disturb the peace and tranquility of the respectable young men and women, to be found in a student union building, by the use of loud, lewd and perverted language.... We have cited numerous Kansas cases holding that indecent language alone may constitute a breach of the peace. However, if we accept appellant's challenge -- "What circumstances, if any, presented any riotous conditions in the case at bar?" -- we find no difficulty in sustaining the conviction.... The language used was quite sufficient to create an incident or a riotous condition.[22]

The second case involved a woman, Elizabeth A. Severson, who was convicted in the Circuit Court of Volusia County Florida, on March 30, 1970, for the "use of profane, loud, or boisterous language so as to outrage the sense of public decency, and in such a manner as to constitute a breach of the peace."[23] A United States District Court intervened, declared the Florida disorderly conduct statute under which Ms. Severson had been convicted to be unconstitutional, and ordered the county court's judgment to be vacated. Federal District Judge William McRae, finding that the conviction had been solely for the use of language which outraged "the sense of public decency," said:

*The Florida statute permits speech to be measured by the standards of "public morals" and "public decency." Such "standards" provide no protection from a wide range of potential abuse of the preferred guarantee of the first amendment... Another standard in the Florida statute is additionally unconstitutional for overbreadth in that it proscribes "** such acts as *** affect the peace and quiet of persons who may witness them***" Narrower language was considered by the United States Supreme Court in Terminiello v. City of Chicago... where it was stated: .... A function of free speech under our system of government is to invite dispute. It may indeed serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger..." ....A conviction resting on any of these grounds may not stand.*[24]

The attitudes of Judge McRae and of the members of the Kansas Supreme Court toward provocative language could hardly have been farther apart. Such widely varying interpretations of what the First Amendment forbade and what it allowed in this area were made possible by the fact that the United States Supreme Court had been silent on the subject for nearly thirty years, leaving ample room for speculation as to how *Chaplinsky* might be construed in a current setting. On June 7, 1971, we received the first indication of the Supreme Court's contemporary posture toward the "fighting words" doctrine.

The case was *Cohen v. California* and it involved a young man who had walked through the corridor of a Los Angeles County Courthouse on April 20, 1968, wearing a jacket on which were emblazoned the words, "Fuck the Draft." Cohen was arrested and convicted at his trial for violation of Section 415 of the California Penal Code which prohibited "maliciously and willfully disturb[ing] the peace or quiet of any neighborhood or person...by tumultous or offensive conduct..."[25] The conviction was affirmed by a California Court of Appeals, denied review by a 4-3 vote of the California Supreme Court, and then taken to the United States Supreme Court by the American Civil Liberties Union of Southern California.

Near the end of its 1971 term, by a vote of 5-4, the United States Supreme Court reversed Cohen's conviction and rendered an opinion

that is unusual in the force and directness with which it addresses many substantive free speech issues and in the sophistication of its analysis of the speech communication process. Under ordinary circumstances such an opinion would clearly stand as a major landmark decisively influencing future First Amendment cases, and it is still possible that such will be its ultimate impact. Its unpredictable author, however, Justice John Marshall Harlan, was shortly to leave the bench, along with Justice Hugo Black, who even more unpredictably joined in the dissent; the two to be replaced by Justices Lewis Powell and William Rehnquist, both of whom were unlikely to find acceptable many of the Cohen opinion's sweeping dicta. This left the immediate fate of the decision in the hands of Justice Byron White, whose dissent was on narrower grounds than that of Justices Blackmun, Black, and Chief Justice Burger, and who, as we shall see shortly, has shown an inclination in more recent closely related cases to join with Justices Brennan, Douglas, Marshall and Stewart rather than with President Nixon's appointees. Indeed this may be one of the very few issues to come before the Court in the days ahead on which Justice White casts his lot with the so-called "liberal" rather than the so-called "conservative" bloc.

Let us now look at the opinion itself, rather than speculating any further as to its future. After reviewing the facts of the case and the disposition of it by the lower courts, Justice Harlan proceeds to discuss five possible grounds on which this or any other speech might be proscribed, and finds each of them inapplicable to Cohen.[26]

The first conceivable basis for valid conviction, according to the Court's opinion, would be a circumstance such as that in *United States v. O'Brien*, the draft-card burning case, in which it was held that "conduct," even though intended as "speech," could be punished in furtherance of a legitimate governmental interest in its control. Since the charge against Cohen involved only the use of words, this criterion was not applicable.

A second possible basis for punishment would be present if the speech in question involved a direct incitement to illegal behavior, such as to draft resistance. The words on Cohen's jacket, however, could not be so

construed, but were rather the expression of political opinion which is protected by the First and Fourteenth Amendments.

A third contingency would be one in which the words spoken fell into that category of unprotected speech which the Court has defined as obscene. But, Justice Harlan points out, "such expression must be,in some significant way, erotic." And then he wryly adds: "It cannot plausibly be maintained that this vulgar allusion to the Selective Service System would conjure up such psychic stimulation in anyone likely to be confronted with Cohen's crudely defaced jacket."[27]

The fourth possibility for a constitutionally permissible restraint would be present if the speech in question constituted "fighting words." It is at this point that Justice Harlan enunciates the majority's understanding of what is encompassed by that phrase, and explains why Cohen's message does not fit the definition:

> *This court has held that the States are free to ban the simple use, without a demonstration of additional justifying circumstances, of so-called "fighting words," those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowlege, inherently likely to provoke violent reaction. Chaplinsky v. New Hampshire.... While the four-letter word displayed by Cohen in relation to the draft is not uncommonly employed in a personally provocative fashion, in this instance it was clearly not "directed to the person of the hearer." Cantwell v. Connecticut.... No individual actually or likely to be present could reasonably have regarded the words on appellant's jacket as a direct personal insult. Nor do we have here an instance of the exercise of the State's police power to prevent a speaker from intentionally provoking a given group to hostile reaction. Cf. Feiner v. New York.... There is, as noted above, no showing that anyone who saw Cohen was in fact violently aroused or that appellant intended such a result.*[28]

What the Court is saying here, more clearly than it ever had before, is that "fighting words" occur *only* when addressed to a particular individual who is their target, and then *only* if "inherently likely to provoke violent reaction." Unfortunately, the Court persists in repeating the archaic concept that words may have an "inherent" quality of some sort -- a concept that was contradicted the very first

time it was advanced by the New Hampshire Supreme Court in *Chaplinsky* when that court itself acknowledged that particular words might have a different meaning and beget a different response depending on whether they are said with or without "a disarming smile."

We can fairly conclude, however, from later comments in the Cohen opinion, that the adoption of the word "inherent" was inadvertent and that the Court did not really mean what it seemed to be saying by the use of that term. The first evidence of this comes when Justice Harlan holds that the California court was mistaken if it felt that it could properly

> *... excise, as "offensive conduct," one particular epithet from the public discourse...upon the theory... that its use is inherently likely to cause violent reaction.... The rationale of the California court is plainly untenable. At most it reflects an "undifferentiated fear or apprehension of disturbance [which] is not enough to overcome the right to freedom of expression." Tinker v. Des Moines.... We have been shown no evidence that substantial numbers of citizens are standing ready to strike out physically at whoever may assault their sensibilities with execrations like that uttered by Cohen. There may be some persons about with such lawless and violent proclivities, but that is an insufficient base upon which to erect, consistently with constitutional values, a governmental power to force persons who wish to ventilate their dissident views into avoiding particular forms of expression.*[29]

In other words, the opinion seems to be recognizing, quite sensibly, that the occurrence of violence in response to particular language is dependent upon the "proclivities" of the auditor, and not inevitably dictated by qualities "inherent" in the words spoken. Further recognition by the Court that the response to communication is "in the eye of the beholder" comes near the end of the Harlan opinion:

> *...the principle contended for by the State seems inherently boundless. How is one to distinguish this from any other offensive word? Surely the State has no right to cleanse public debate to the point where it is grammatically palatable to the most squeamish among us. Yet no readily ascertainable general principle exists for stopping short of that result were we to affirm*

the judgment below. For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric. Indeed, we think it is largely because government officials cannot make principled distinctions in this area that the Constitution leaves matters of taste and style so largely to the individual.[30]

What is left, one might well ask at this point, of the "fighting words" category? In the view of the *Cohen* court majority, at least, it would seem to have been limited not only to personal epithets directed to another individual in face-to-face communication, but limited also to circumstances where it can be demonstrated, to a degree that is more than just speculative, that physical conflict was likely to ensue.

To complete our exposition of the Harlan opinion, we must now return to the fifth basis it suggests, and rejects, as a possible ground for Cohen's conviction; as it, too, has indirect implications for the viability of the "fighting words" doctrine. The Court sets forth, as an additional condition under which speech may be suppressed, circumstances in which offensive expression is "thrust upon unwilling or unsuspecting viewers."[31] The Court does not by any means suggest that all such circumstances may justify the suppression of speech, and particularly not in the circumstances of the *Cohen* case, but it does open the door to the shutting off of discourse when there is a "showing that substantial privacy interests are being invaded in an essentially intolerable manner." But we should let the Court speak for itself:

Of course, the mere presumed presence of unwitting listeners or viewers does not serve automatically to justify curtailing all speech capable of giving offense.... While this Court has recognized that government may properly act in many situations to prohibit intrusion into the privacy of the home of unwelcome views and ideas which cannot be totally banned from the public dialogue, e.g. Rowan V. Postmaster General... we have at the same time consistently stressed that "we are often 'captives' outside the sanctuary of the home and subject to objectionable speech." Id.... In this regard, persons confronted with Cohen's jacket were in a quite different posture than, say, those subjected to the raucous emissions of sound trucks blaring outside their residences. Those in the Los Angeles courthouse could effectively

avoid further bombardment of their sensibilities simply by averting their eyes.... if Cohen's "speech" was otherwise entitled to constitutional protection, we do not think the fact that some unwilling "listeners" in a public building may have been briefly exposed to it can serve to justify this breach of peace conviction....[32]

These words from the *Cohen* opinion, though not addressed directly to the fighting words issue, do, nonetheless, carry the rather clear implication that some of the earlier thinking about words which alledgedly "inflict injury" on others may require some careful reconsideration.

Before leaving the Cohen case behind, it is important for an appreciation of its possible future fate to take note of the very brief views expressed by the four dissenting justices. Justice Blackmun, with whom Chief Justice Burger and Justice Black joined, wrote two short paragraphs in dissent. The first, in its totality, says simply, if not simple-mindedly:

Cohen's absurd and immature antic, in my view was mainly conduct and little speech. See Street v. New York, 394 U.S. 576 (1969); Cox v. Louisiana, 379 U.S. 536, 555 (19633); Gibney v. Empire Storage Co., 336 U.S. 490, 502 (1949). The California Court of Appeal appears so to have described it, 1 Cal. App. 3d. at 100, and I cannot characterize it otherwise. Further, the case appears to me to be well within the sphere of Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), where Mr. Justice Murphy, a known champion of First Amendment freedoms wrote for a unanimous bench. As a consequence, this Court's agonizing over First Amendment values seems misplaced and Unnecessary.[33]

The second paragraph, with which Justice White also concurred, makes a more subtle point. It argues that, in a case decided by the California Supreme Court just one month after it had refused to review *Cohen*, that court construed Section 415 of the California Penal Code in such a way as to make it clear that it "does not make criminal any nor violent act unless the act incites or threatens to incite others to violence"[34]. Since Cohen has been convicted in the lower California courts for violating Section 415 before this interpretation of the statute was handed down by the state Supreme Court, and since the outcome might

have been influenced or at least made constitutionally acceptable if that interpretation had governed the case, the four dissenters would have remanded the case to the California courts for reconsideration, rather than reversing the judgment.[35]

As was indicated earlier, the *Cohen* decision was to be the last free speech case, aside from the special post-term Pentagon Papers opinion (*New York Times v. U.S.*) in which Justices Black and Harlan ever participated. The next time the Court confronted the "fighting words" issue it was with depleted ranks, Justices Powell and Rehnquist not yet having taken their seats on the bench when the case was argued. Again, as in *Cohen*, the Court reversed a state breach of the peace conviction, this time by a more comfortable 5-2 margin, with Justice White abandoning President Nixon's appointees to join with the remains of the *Cohen* majority.

The case was *Gooding v. Wilson*, decided on March 23, 1972, and if ever fighting words have been uttered, this would seem to have been them. The scene occurred on August 18, 1966, in front of the building which houses the Armed Forces Entry and Examining Station in Atlanta, Georgia. Johnny Wilson was one of a group of demonstrators carrying signs opposing the war in Vietnam. The Supreme Court of Georgia described the ensuing events as follows:

> *When the inductees arrived at the building, these persons began to block the door so that the inductees could not enter. They were requested by police officers to move from the door, but refused to do so. The officers attempted to remove them from the door, and a scuffle ensued. There was ample evidence to show that the defendant [Wilson] committed assault and battery on the two police officers named in the indictment. There was also sufficient evidence of the use of the opprobrious and abusive words charged.... Court 3 of the indictment alleged that the accused 'did without provocation use to and of M.G. Redding and in his presence, the following abusive language and opprobrious words, tending to cause a breach of the peace: "White son of a bitch, I'll kill you." "You son of a bitch, I'll choke you to death." Court 4 alleged that the defendant 'did without provocation use to and of T. L. Raborn, and in his presence, the following abusive language and opprobrious words, tending to cause a breach of the peace: "You son of a bitch, if you ever put your hands on me again, I'll cut you all to pieces."'*[36]

It was solely Wilson's conviction for the use of "abusive language and opprobrious words" that was appealed from the state to the federal courts, on the grounds of an alleged violation of the First and Fourteenth Amendments. The state assault and battery conviction was left undisturbed, and additional federal convictions for interfering with administration of the draft law and for injuring United States property were left standing in separate litigation.[37] As to the free speech issue, Wilson's case was taken from the Georgia Supreme Court to a United

States District Court, which found that the Georgia law under which Wilson's conviction had been obtained was unconstitutionally vague and overbroad. That judgment was affirmed by the United States 5th Circuit Court of Appeals, and again by the United States Supreme Court.

Although the statute in question contained the phrase "tending to cause a breach of the peace" immediately following the phrase "opprobrious words or abusive language," it was the authoritative interpretation of that statute by the Georgia courts, rather than the language of the law itself, that rendered it unconstitutional in the eyes of the federal courts. The state of Georgia had claimed that its law, and the construction of it by the state's courts, were no different from what had occurred in New Hampshire with respect to *Chaplinsky*. The United States Supreme Court did not agree. Before explaining the Court's rationale, Justice William Brennan's opinion for the majority first comments on the current status of the "fighting words" doctrine itself: "Our decisions since *Chaplinsky* have continued to recognize state power consitutionally to punish 'fighting' words under carefully drawn statutes not also susceptible of application to protected expression, *Cohen v. California* ... We reaffirm that proposition today."[38] Justice Brennam's opinion then proceeds:

> *We have... made our own examination of the Georgia cases.... That examination brings us to the conclusion, in agreement with the [federal] courts below, that the Georgia appellate decisions have not construed §26-6303 to be limited in application, as in Chaplinsky, to words that "have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed."*

The dictionary definitions of "opprobrious" and "abusive" given them greater reach than "fighting" words.... Georgia appellate decisions have construed §26-6303 to apply to utterances that, although within these definitions, are not "fighting" words as Chaplinsky defines them. In Lyons v. State, 94 Ga. App. 570, 95 S.E. 2d 478 (1956), a conviction under the statute was sustained for awakening 10 women scout leaders on a camp-out by shouting, "Boys, this is where we are going to spend the might." "Get the G-- d--- bedrolls out... let's see how close we can come to the G-- d--- tents." Again, in Fish v. State, 124 Ga. 416, 52 S.E. 737 (1905), the Georgia Supreme Court held that a jury question was presented by the remark, "You swore a lie." Again, Jackson v. State, 14 Ga. App. 19, 80 S.E. 20 (1913), held that a jury question was presented by the words addressed to another, "God damn you, why don't you get out of the road?" Plainly... these were not words "which by their very utterance...tend to incite an immediate breach of the peace"...

Georgia appellate decisions construing the reach of "tendency to cause a breach of the peace" underscore that §26-6303 is not limited, as appellant argues, to words that "naturally tend to provoke violent resentment."... Indeed, the Georgia Court of Appeals in Elmore v. State, 15 Ga. App. 461, 83 S.E. 799 (1914), construed "tending to cause a breach of the peace" as mere

> *"words of description, indicating the kind of character of opprobrious words or abusive language that is penalized, and the use of words or language of this character is a violation of the statute, even though addressed to one who, on account of circumstances or by virtue of the obligations of office, cannot actually then and there resent the same by a breach of the peace.... Suppose that one, at a safe distance and out of hearing of any other than the person to whom he spoke, addressed such language to one locked in a prison cell or on the opposite bank of an impassable torrent, and hence without power to respond immediately to such verbal insults by physical retailiation, could it be reasonably contended that, because no breach of the peace could then follow, the statute would not be violated?... [T]hough on account of opprobrious words or abusive language, the words or language might still tend to cause a breach of the peace at some future time, when the person to whom they were addressed might no longer be hampered..."*

Moreover, in Samuels v. State... the Court of Appeals, in applying

another statute, adopted from a textbook the common law definition of "breach of the peace."

> *"The term 'breach of the peace' is generic, and includes all violations of the public peace or order, or decorum... By 'peace,' as used in this connection, is meant the tranquility enjoyed by the citizens of a municipality or of a community where good order reigns among its members."*

This definition makes it a "breach of the peace" merely to speak words offensive to some who hear them, and so sweeps too broadly....

We conclude that "[t]he separation of legitmate from illegitimate speech calls for more sensitive tools than [Georgia] has supplied." Speiser v. Randall....[39]

In view of these defects found by the United States Supreme court in the authoritative interpretations of the Georgia law, neither Wilson nor anybody else could be found guilty of its violation, and thus the setting aside of his conviction was required. Whether Wilson's speech was indeed "fighting words," by a definition of that concept which would be acceptable to the Supreme Court, we will never know, for the majority opinion dismisses the facts of the particular case before it in an offhand manner that underscores their irrelevance to the larger issue being addressed: "It matters not that the words appellee used might have been constitutionally prohibited under a narrowly and precisely drawn statute."[40] For, continues the Court, quoting its earlier opinion in *Coates v. Cincinnati*, 402 U.S. 611, 619-620, "Although a statute may be neither vague, overbroad, nor otherwise invalid as applied to the conduct charged against a particular defendant, he is permitted to raise its vagueness or unconstitutional overbreadth as applied to others. And if the law is found deficient in one of these respects, it may not be applied to him either, until and unless a satisfactory limiting construction is placed on the statute. The statute, in effect, is stricken down on its face. This result is deemed justified since the otherwise continued existence of the statute in unnarrowed form would tend to suppress constitutionally protected rights."[41] .

Chief Justice Burger and Justice Blackmun were vehement in dissent from the *Gooding v. Wilson* decision. The Chief Justice, describing it as

a "bizarre result," had the following criticism to make:

> *... it is nothing less than remarkable that a court can find a state statute void on its face, not because of its language -- which is the traditional test -- but because of the way courts of that State have applied the statute in a few isolated cases, decided as long ago as 1905 and generally long before this Court's decision in Chaplinsky.... If words are to bear their common meaning... this statute has little potential for application outside the realm of "fighting words" which this Court held beyond the protection of the First Amendment in Chaplinsky. Indeed, the language used by the Chaplinsky court to describe words properly subject to regulation bears a sticking resemblance to that of the Georgia statute.... There is no persuasive reason to wipe the statute from the books, unless we want to encourage victims of such verbal assaults to seek their own private redress.*[42]

Justice Blackmun's dissent not only expresses his own feelings about the present decision, as well as about *Chaplinsky* and *Cohen*, but it makes a charge against the majority which even some of that majority's supporters, such as this writer, might suspect to be true: "For me, *Chaplinsky*... was good law when it was decided and deserves to remain as good law now.... But I feel that by decisions such as this one and, indeed, *Cohen*... the Court, despite its protestations to the contrary, is merely paying lip service to *Chaplinsky*."[43]

Just three months after *Gooding v. Wilson*, on June 26, 1972, the justices of the Supreme Court once again had something to say about "fighting words" -- an amazingly prolific outpouring when measured against its nearly three decades of previous silence. This time all four of Mr. Nixon's appointees were able to participate, thus providing rather clear indications of where the balance of power on the new Court rests with regard to the "fighting words" doctrine.

The occasion was presented by three cases, each with rather different nuances. Two of them, in Justice Powell's view, were sufficiently distinguishable from the third to lead him to defect from the Nixon bloc in those two cases and to join with the five justices who had constituted the *Gooding v. Wilson* majority and who continued to constitute a majority in these three decisions, even without Justice Powell's assistance.

The first case, and the one on which Justice Powell remained in the Nixon fold, was *Rosenfield v. New Jersey*. It concerned a speech made by Rosenfield at "a public school board meeting attended by about 150 people, approximately 40 of whom were children and 25 of whom were women. In the course of his remarks he used the adjective "M--- F-----" on four occasions, to describe the teachers, the school board, the town and his own country."[44]

Rosenfield was prosecuted and convicted under a New Jersey law which reads that "[a]ny person who utters loud and offensive or profane or indecent language in any public street or other public place, public conveyance, or place to which the public is invited... is a disorderly person."[45]

The New Jersey Supreme Court, prior to this case, had limited the coverage of this statute by the following construction: "... the words must be spoken loudly, in a public place and must be of such a nature as to be likely to incite the hearer to an immediate branch of the peace or to be likely, in the light of the gender and age of the listener and the setting of the utterance, to affect the sensibilities of a hearer. The words must be spoken with the intent to have the above effect or with reckless disregard of the probability of the above consequences."[46]

The United States Supreme Court majority, in a one sentence order without opinion, vacated the judgment against Rosenfield and remanded the case to the New Jersey courts for reconsideration in the light of *Cohen* and *Gooding*, neither of which had been on the books when New Jersey first decided *Rosenfield*.

Justice Powell's dissenting opinion, joined by the Chief Justice and Justice Blackmun, argues that *Cohen* and *Gooding* are not relevant to *Rosenfield*, and that "considerations not present in those cases are here controlling." He continues:

> *Perhaps appellant's language did not constitute "fighting words" within the meaning of Chaplinsky. While most of those attending the school board meeting were undoubtedly outraged and offended, the good taste and restraint of such an audience may have made it unlikely that physical violence would result.*

Moreover, the offensive words were not directed at a specific individual. But the exception to First Amendment protection recognized in Chaplinsky is not limited to words whose mere utterance entails a high probability of an outbreak of physical violence. It also extends to the willful use of scurrilous language calculated to offend the sensibilities of an unwilling audience.[47]

The Justice's dissenting opinion then picks up the quotation from the United States Court of Appeals decision in *Williams v. District of Columbia*, which we have cited earlier, and in which the point is made that the *Chaplinsky* opinion excludes from First Amendment protection *both* speech that threatens to lead to violence *and* that which "inflicts injury" because it is grossly offensive to those who hear it.

Justice Powell adds: "I agree with this view that a verbal assault on an unwilling audience may be so grossly offensive and emotionally disturbing as to be the proper subject of criminal proscription, whether under a statute denoting it disorderly conduct or, more accurately, a public nuisance."[48]

The Powell dissent concludes with as articulate a statement as we may find anywhere of the values which motivate a restrictive view of the First Amendment in this area:

The preservation of the right to free and robust speech is accorded high priority in our society and under our Constitution. Yet there are other significant values. One of the hallmarks of a civilized society is the level and quality of discourse. We have witnessed in recent years a disquieting deterioration in standards of taste and civility in speech. For the increasing number of persons who derive satisfaction from vocabularies dependent upon filth and obscenities, there are abundant opportunities to gratify their debased tastes. But our free society must be flexible enough to tolerate even such a debasement provided it occurs without subjecting unwilling audiences to the type of verbal nuisance committed in this case. The shock and sense of affront, and sometimes the injury to mind and spirit, can be as great from words as from some physical attacks.[49]

The second case in this group decided on June 26, 1972, was *Lewis v. City of New Orleans*. Here, the individual who had been convicted for

breach of the peace was a woman whose son was being arrested by the police. During the course of the arrest, Ms. Lewis attempted to intervene and at one point addressed the officers as "G--d--f-----g police."[50] She was charged with violation of a New Orleans city ordinance which provides that "It shall be unlawful and a breach of the peace for any person wantonly to curse or revile or to use obscene or opprobrious language toward or with reference to any member of the city police while in the actual performance of his duty."[51]

The Supreme Court majority, in a single sentence without opinion, as in *Rosenfield*, remanded the case to the Louisiana courts for reconsideration in the light of *Gooding v. Wilson*. This time Justice Powell joined with the majority, and though his vote may have been superfluous, his brief opinion most certainly was not. Indeed, it is astonishing that in the full line of cases involving "fighting words," beginning with *Chaplinsky* itself, no one on the high court had ever before made his painfully obvious point: "If these words had been addressed by one citizen to another, face to face and in a hostile manner, I would have no doubt that they would be "fighting words." But the situation may be different where such words are addressed to a police officer trained to exercise a higher degree of restraint than the average citizen."[52]

The third and last case in this group to be decided by the Court, again by a simple order of remand for reconsideration in the light of *Cohen* and of *Gooding*, was *Brown v. Oklahoma*. Brown had been convicted of violating an Oklahoma statute that made it illegal to utter "any obscene or lascivious language or word in any public place, or in the presence of females...."[53] The behavior upon which this conviction was based was a speech Brown had given to a large audience of both men and women in the University of Tulsa chapel: "During a question and answer period he referred to some policemen as "m----- f----- fascist pig cops" and to a particular Tulsa police officer as that "... black m----- f------ pig."[54]

The reasons for Justice Powell's concurrence in this decision are again of interest because of the willingness they reveal on his part to draw finer lines of distinction when the First Amendment is at stake than his fellow Nixon appointees: "The statute involved in this case is

considerably broader than the statute involved in Rosenfield v. New Jersey... and it has not been given a narrowing construction by the Oklahoma courts. Moreover, the papers filed in this case indicate that the language for which appellant was prosecuted was used in a political meeting to which appellant had been invited to present the Black Panther viewpoint. In these circumstances language of the character charged might well have been anticipated by the audience.

"'These factors led me to conclude that this case is significantly different from Rosenfield v. New Jersey...."[55]

Chief Justice Burger and Justice Rehnquist each wrote a single dissenting opinion addressed to all three cases, and each one joined in the other's dissent, along with Justice Blackmun. For Justice Rehnquist, the language used by all of the appellants "clearly falls within the class of punishable utterances described in Chaplinsky."[56]

He further makes it clear that: "Insofar as the Court's remand is based on Cohen... for the reasons stated in Justice Blackmun's dissenting opinion in that case I would not deny to these States the power to punish language of the sort used here by appropriate legislation."[57]

The Chief Justice could apparently do no better, in his dissenting opinion, than to reiterate and elaborate at much greater length than when first mentioned in his *Gooding* dissent, his preoccupation and implicit sympathy with those red-blooded Americans who stand ready to defend the civility of our language by beating to a bloody pulp any who would dare to defile it. It is well that we read his comments in their entirety in order to appreciate the full flavor of his philosophy:

> *The important underlying aspect of these cases goes really to the function of law in preserving ordered liberty. Civilized people refrain from "taking the law into their own hands" because of a belief that the government, as their agent, will take care of the problem in an organized, orderly way with as nearly a uniform response as human skills can manage. History is replete with evidence of what happens when the law cannot or does not provide a collective response for conduct so widely regarded as impermissible or intolerable.*

It is barely a century since men in parts of this country carried guns constantly because the law did not afford protection. In that setting, the words used in these cases, if directed toward such an armed civilian, could well have led to death or serious bodily injury. When we undermine the general belief that the law will give protection against fighting words and profane and abusive language such as the utterances involved in these cases, we take steps to return to the law of the jungle. These three cases, like Gooding, are small but symptomatic steps. If continued, this permissiveness will tend further to erode public confidence in the law -- that subtle but indispensable ingredient of ordered liberty.

In Rosenfield's case, for example, civilized people attending such a meeting with wives and children would not likely have an instantaneous, violent response, but it does not tax the the imagination to think that some justifiably outraged parent whose family were exposed to the foul mouthings of the speaker would "meet him outside" and either alone or with others, resort to the 19th Century's vigorous modes of dealing with such people. I cannot see these holdings as an "advance" in human liberty but rather a retrogression to what men have struggled to escape for a long time.[58]

One could hardly find a starker contrast than that between our present Chief Justice's ambivalent nostalgia for the "vigorous" 19th Century (when, it might bynoted, hyphens were also substituted for four-letter words), and the couragous, avant-garde statements of the late and more truly conservative Justice Harlan as he concluded his opinion that the First Amendment protected the right of Paul Robert Cohen to say "Fuck the Draft" in public:

To many, the immediate consequence of this freedom may often appear to be only verbal tumult, discord, and even offensive utterance. These are, however, within established limits, in truth necessary side effects of the broader enduring values which the process of open debate permits us to achieve. That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated....

Additionally, we cannot overlook the fact, because it is well illustrated by the episode involved here, that much linguistic

expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the cognitive content of individual speech, has little or no regard for that emotive function which, practically speaking, may often be the more important element of the overall message sought to be communicated.... we cannot indulge the facile assumption that one can forbid particular words without also running a substantial risk of suppressing ideas in the process.[59]

On June 26, 1972, in *Rosenfield Lewis*, and *Brown*, the Burger view of the "fighting words" doctrine was still a minority opinion. The *Cohen* and *Gooding* "amendments" to *Chaplinsky* stood as the law of the land. Apparently that will remain the case at least as long as Justices Brennan, Douglas, Marshall, Stewart, and White are still on the bench of the United States Supreme Court.

Footnotes

1. *Cleveland Press*, April 22, 1971.
2. *Ibid.*
3. *Chaplinsky v. New Hampshire*, 315 U.S. 568, 569 (1942).
4. *Ibid.*
5. *Ibid.*, p. 573.
6. *Ibid.*
7. *Ibid.*, pp. 571-72.
8. Letter from the author to Justice Hugo Black, January 4, 1964.
9. Letter from Justice Hugo Black to the author, January 7, 1964.
10. *Terminiello v. Chicago*, 337 U.S. 1, 3 (1949); *Beauharnais v. Illinois*, 343 U.S. 250, 257 (1952); *Roth v. U.S.*, 354 U.S. 476, 485 (1957); *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963); *New York Times v. Sullivan*, 376 U.S. 254, 268 (1964); *Garrison v. Louisiana*, 279 U.S. 64, 70 (1964); *Bachellar V. Maryland*, 397 U.S. 564, 567 (1970).
11. *Civil Liberties*, February, 1968, p. 5.
12. *Chicago Daily News*, March 23, 1968, p. 8.
13. *New York Times*, September 20, 1970, p. 18.
14. *Williams v. District of Columbia*, 419 F. 2d 638, 641 (1969).
15. *Ibid.*, p. 643.
16. *Ibid.*
17. *Ibid.*, p. 644.
18. *Ibid.*, p. 645.
19. *Ibid.*, p. 646.
20. *State v. Cleveland*, 469 P.2d 251, 251-54 (1970).
21. *Ibid.*, p. 254.
22. *Ibid.*, pp. 254-255.
23. *Severson v. Duff*, 322 F. Supp. 4, 6 (1970).
24. *Ibid.*, p. 9.
25. *Cohen v. California*, 403 U.S. 15 (1971).
26. *Ibid.*, pp. 18-22.
27. *Ibid.*, p. 20.
28. *Ibid.*

29. *Ibid.*, pp. 23-3.
30. *Ibid.*, p. 25.
31. *Ibid.*, p. 21.
32. *Ibid.*, pp. 21-2. For a more detailed discussion of the question of the public thrusting of offensive communication see Franklyn Haiman, "Speech v. Privacy: Is There A Right Not To Be Spoken To?" *Northwestern University Law Review*, LXVII, pp. 153-99.
33. *Ibid.*, p. 27.
34. *Ibid.*, p. 28.
35. *Ibid.*, The majority opinion, in a footnote, also takes cognizance of the California Supreme Court's later interpretation of Section 415. However, it does not regard this action as making any significant difference, because it believes that the California appellate court which reviewed the Cohen conviction relied on substantially the same kind of interpretation of Section 415 as the state supreme court later enunciated, and because that very same state supreme court decision cited with approval the appellate court's *Cohen* opinion.
36. *Wilson v. State*, 223 Ga. 531, 534-535, 156 S.E. 2d 446, 449-450 (1967).
37. *Tillman v. United States*, 406 F. 2d 930 (1969).
38. *Gooding v. Wilson*, 40 U.S. Law Week 4329, 4331 (1971).
39. *Ibid.*, pp. 4331-4332. This opinion is quoted at such length because it so concretely illustrates the kinds of difficulties posed by a doctrine such as "fighting words."
40. *Ibid.*, p. 4330.
41. *Ibid.*
42. *Ibid.*, pp. 4332-4333.
43. *Ibid.*, p. 4335.
44. *Rosenfield v. New Jersey*, 40 U.S. Law Week 3612 (1972), Justice Powell, dissenting.
45. *Ibid.*, p. 3613.
46. *State v. Profaci*, 56 N.H. 346, 353, 266 A. 2d 579, 583-584 (1970).
47. *Rosenfield v. New Jersey*, 40 U.S. Law Week 3612, 3613, Justice Powell, dissenting.
48. *Ibid.*
49. *Ibid.*

50. *Lewis v. City of New Orleans*, 40 U.S. Law Week 3614, Justice Rehnquist, dissenting. One fascinating measure of the difference between the *Cohen-Gooding* majority's view of this kind of language and that of Mr. Nixon's appointees is that Justice Harlan in *Cohen* and Justice Brennan in *Gooding* spelled out the work "fuck" in their opinions, whereas Justice Powell in *Rosenfield* and Justice Rehnquist in *Lewis* resort to hyphens.
51. *Ibid*.
52. *Ibid*.
53. *Brown v. Oklahoma*, 40 U.S. Law Week 3614, Justice Rehnquist, dissenting.
54. *Ibid*.
55. *Brown v. Oklahoma*, 40 U.S. Law Week 3614, 3615, Justice Powell, concurring.
56. *Ibid*., p. 3614, Justice Rehnquist, dissenting.
57. *Ibid*.
58. *Rosenfield v. New Jersey*, 40 U.S. Law Week 3613, Chief Justice Burger, dissenting.
59. *Cohen v. California*, 403 U.S. 15, 24-26 (1971).

Leadership and Language

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LEADERSHIP AND LANGUAGE

Eric Hoffer, in his new book *Reflections on the Human Condition*, observes:

> *We never say so much as when we do not quite know what we want to say. We need few words when we have something to say, but all the words in all the dictionaries will not suffice when we have nothing to say and want desperately to say it.*

His words echo the desperation of a leaderless time.

The central view I offer is this: the present crisis of leadership is a crisis of language--and this dual crisis is upon us from the campus to the white house. I see the relationship between leadership and language in three mutual dimensions: a quest for vision, a need for clear purpose, and a grounding in high expectations.

An Old Testament dictum warns: "Where there is no vision, the people perish." Above the high doors of the Nelson Gallery of Art in Kansas City are the words: "It is by the real that we exist / it is by the ideal that we live." In a book soon to be published, George B. Leonard rejects the apologists who take refuge in "the human condition" and accept what typically is as what has to be. On the contrary, he contends that "not to dream boldly may be simply irresponsible." These several views seem contained in the old insight that "some men invent reality to dignify their own limitations."

Nevertheless, the frequent affirmation that vision is essential to humane progress goes largely unheeded today. Few are the leaders whose language captures a vision or a dream, few leaders point toward an ideal. This criticism applies equally to leaders of the counterculture and the establishment.

Alexander Louis Theroux, writing of "the inarticulate hero" scores

accurately in the following analysis of an *Esquire* interview with Peter Fonda.

> *The interview was truly remarkable as a demonstration of what has now become the national anthem of the deep thinker and the social revolutionary: the argumentum ad silentium, born of the strict refusal to try to deploy the common language of nouns and verbs, lest, in working through that medium, one fail to do justice to the massive complexities of one's vision or the profundities of one's thoughts.*

The preceding criticism could also apply to the other end of the leadership spectrum. President Nixon had greatness within his grasp as he touched glasses with Chinese leaders in the Great Hall of the People in Peking. But I doubt that anyone remembers what he said on that occasion, for he failed to say anything memorable. And that is a loss. For those who saw the moment via satellite, it is unforgetable--but it is impossible to convey the spirit and mood of that breakthrough to anyone who did not witness the occasion, for the President did not offer any language to capture and sustain that moment.

Possibly this widespread lapse of leadership stems from a basic misunderstanding of a leader's role. Too many see a leader as a plan-maker and problem-solver, but somehow the plans never gain complete acceptance and the problems linger unresolved. The need is not someone to persuade us and give us a plan, but someone to inspire us and call us to our own best selves. Were there leaders of such driving spirit, we might find our own plans and solve many more problems. John Ciardi writes:

> *The issue remains our need to re-create the language in which we can know ourselves and our purposes. Only in that tongue, could we find it, lies our hope of speaking the problems to ourselves and of forming ourselves equal to the problems we have found our own best terms for. ... This year, as never before, I want in my head the sound Emerson made, and Thoreau, and Jefferson, and Lincoln, and Ben Franklin at times, and Whitman at his best, and Frost. I want the size and tone of their way of saying, as it can still be heard when Archibald MacLeish speaks, and, yes, as Norman Thomas spoke it in his own adamant time, out of the running but tall in the principle. I have no need to agree with*

everything they say? it is the sound of their saying I need, those terms in which a man meets principle if only to fail it, but to fail it at an altitude better than all lower successes.

A second relationship between leadership and language is that both require clarity of purpose. A real leader gives a point of departure expressed in language which is courageously clear.

However, Harry Reasoner--in the television special "The Strange Case of the English Language"--spoke of the "somewhat, rather, or almost" speakers. He cited Robert McNamara telling a congressional committee: "At the time of seizure, we are quite positive the ship was in international waters." Reasoner reflected: "He is 'quite positive'. Does he mean completely positive or does he mean somewhat, rather, or almost positive?"

Kinsmen to those who hedge are the opinion leaders who use ambiguity as though it were a talent. On a recent television special, Helen Hayes borrowed a line from the Declaration of Independence--"a decent respect for the opinions of mankind." She said that this year her holiday greeting to her playwright and director friends will read: "I wish you a Merry Christmas and a new year in which you have a decent respect for the opinions of mankind." Miss Hayes was not calling for censorship of ideas or material, but simply for the artist to take back some responsibility for being clear instead of regarding obscurity as a mark of sophistication.

Clarity of purpose is also undercut by the lack of appropriateness and creativity in the language of many leaders. The summer of '72 in Miami proved that a cliche can last for days. Out of the wariness grows a longing for the time of Adlai Stevenson, who even in the United Nations would rewrite state department memoranda to give them life and color before reading them to the Security Council. In stark contrast, recent years have shown government leaders willing to use vague and inappropriate language as a strategy with the result that years of war-making are called peace-making and the heaviest bombing in history is to be remembered as "protective reaction strikes." *Time* recently editorialized that we have lost our ability to be outraged. Possibly this applies to both the evil we tolerate and the language we allow to rationalize it.

The lack of appropriateness and creativity extends to leaders beyond government. Craig B. Smith, in *The Technology of Noncommunication*, attacks the jargon of the technical writers who distort the language into unintelligible, but high-sounding phrases which fill professional journals and reports. Smith refers to historian Alan Simpson's revision of the twenty-third Psalm in the idiom of the technical writer:

> *The Lord is my external-internal integrative mechanism. I shall not be deprived of gratifications for my viscerogenic hungers or my need-dispositions. He motivates me to orient myself toward a nonsocial object with effective significance. He positions me in a nondecisional situation. He maximizes my adjustment.*

Buckminster Fuller once discovered a period of empty glibness in his own life and left the public view for two years to rediscover the language. His eloquence and influence since indicate that he did. Many contemporary leaders would do well to follow his example.

Clarity of purpose is also undercut by unnecessary verbosity. Few seem to understand that conciseness is persuasive. Eric Hoffer understood it as he distilled the best of what he knew for nearly two decades before publishing *The True Believer*. His example, and his observation at the beginning of this paper, came to mind at a recent meeting which displayed that five times five often equals one-hundred. Five speakers were introduced to speak five minutes each. Instead, they averaged over twenty minutes each and not one said anything he could not have said better in one-fourth the time. Someone once asked Woodrow Wilson how long he would prepare for a ten-minute speech. He said, "Two weeks." "How long for an hour speech?" "One week." "How long for a two-hour speech?" "I am ready now." It is true that we can finally get it said if given enough time? the trick is to say it with some conciseness and precision. It may be well to ponder that the Lord's Prayer has 56 words; Lincoln s Gettysburg Address has 266; the Ten Commandments, 297; the Declaration of Independence, 300; yet a recent government order on cabbage prices has 26,911 words.

The third relationship between leadership and lnaguage is that both are better if expected to be. Possibly we should walk out on speakers more frequently, instead of silently condoning the ruination of lar.guage and

the subsequent dulling of spirit. Speakers and teachers and all leaders who seek an ear should be reminded that an hour address to fifty people is not just one hour. It is fifty hours of collective human time. The speaker should be expected to say something worthy of that.

A disturbing sign of the decline of language is the tendency to dismiss much public speaking as "just rhetoric." This is an injustice to what rhetoric should be expected to be.

Corax called rhetoric the art of persuasion. If it is indeed an art, several assumptions follow. Art assumes the central value of the creator's own experience and conception. This implies minimum tolerance of ghostwriters. Art assumes that persons addressed are capable of intelligent interpretation and choice. This appears to reject the Skinnerian stimulus/response approach which does indeed lead us "beyond freedom and dignity," or the tactics revealed in *The Selling of the President*, or the simulation process which combines public opinion polls and computer technology to determine how to shade campaign issues for different groups of voters. Art provides a means of renewal by expanding our perception. Under this assumption, the real rhetoricians and leaders of our time may be such men as Charles Reich (*The Greening of America*), John Charles Cooper (*The New Mentality*), and George B. Leonard (*Transformation*)--all of whom offer us language in which we can see a larger image of ourselves.

Aristotle called rhetoric the faculty of finding in the particular case the available means of argument. This definition assumes a search. It is well to listen again to Martin Luther King at Ebenezer Baptist Church in Atlanta, in front of the Lincoln Memorial in Washington, before the American Jewish Committee in New York. His words suggest that he understood the uniqueness of each group and searched and found ways to touch their highest aspirations and deepest concerns. The level of public discourse could be raised again if more leaders were expected to make that search.

In summary, this paper suggests that the dual crisis in leadership and language is due to lack of vision, lack of clear purpose, and lack of high expectations.

We might reflect on a concept which has been important in both the Hellenistic and Christian traditions. In both rhetorical and Biblical texts, *logos* has most frequently been translated as *word*. The Gospel of John opens: "In the beginning was the Word and the Word was with God, and the Word was God. ... And the Word became Man." While this is poetic, it has been suggested that this great message would be sharpened if *logos* were translated as *meaning*. "In the beginning was the Meaning and the Meaning was with God, and the Meaning was God. ... And the Meaning became Man." If we also re-translated *logos* to *meaning* in our rhetorical perspective, we might emphasize more clearly what we need. For it is not words, but meaning, that we should ask of our leaders and their language.

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How Do You Tell the Good Guys From the Bad Guys

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HOW DO YOU TELL THE GOOD GUYS FROM THE BAD GUYS

The cover of the November 1968 issue of *Psychology Today* illustrates a political candidate standing on the rear platform of a whistle-stop train. The scene appears to depict a dilemma in the political arena today. On the candidate's right is a mother lifting her baby for the politician to kiss; on his left a television camera is held up to him. Actually the contemporary candidate is faced with no conflict of decision. He swiftly moves to plant his image on the video camera.

This situation makes it apparent that the popularity of television has done more than reduce the ticket sales of the movie houses. The first significant use of this medium was in 1952 with the election of Dwight D. Eisenhower and its use has continued to crescendo to the 1968 election of Richard M. Nixon. President Nixon put more dollars into television than any other phase of his campaign and topped all previous expenditures of presidential candidates.

The popular growth of television has altered the behavior of the candidates in response to the public. It is also possible then, that it has altered the public behavior in response to the candidates? Is the industry that gave the American people their heroes through the worlds of Ben Casey, Matt Dillon, Perry Mason, and Marcus Welby now manipulating the heroes of the world of politics?

The following pages will approach both sides of the question: what is the impact of television on American voter behavior? The issues of the subject, which will provide the structure for the analysis, will include: (1) Is there a "new politics?" (2) Does party identification affect voter behavior? (3) Does group affiliation affect voter behavior? (4) Do candidate images affect voter behavior? (5) Do the issues affect voter behavior? The organizational structure has added meaning when the reader is aware that it reflects the sequence of priorities in voting

behavior prior to 1960. Party alignment was the most prevalent factor influencing voting behavior and the issues were least prevalent.[1] The sequence of priorities is altered today, and this sequence will be discussed in the paper.

After comprehending the investigation of the issues to the question, the reader will be more cognizant of the ramifications from the increased use of television in political campaigning. This in turn, may give added understanding to John F. Kennedy's remark after watching a replay of his 1960 debates with Nixon. "We wouldn't have had a prayer without that gadget."[2]

Political campaigners are utilizing new methods and strategies of communication. Presidential campaigns of the 1950s did not exploit television and in their restrained use, all the communication techniques were practiced -- the stright political talk, the staged conversations, filmed programs, telethons, and short commercials. But at that time, politics had not been taken out of the hands of the lawyers and put into the hands of the advertising agencies. The pollsters had not become strategists and policymakers. The new breed of campaign manager emerged in the 1960s. He was part public relations man, part advertising executive, part pollster, part film-maker, and part computer programmer. One thing was certain, he knew the commandment of television: Thou shalt not bore.

Such a man was Carroll Newton, a senior executive in one of the countries biggest advertising agencies, Batten, Barton, Durstine, and Osborn. He has worked on both Eisenhower campaigns and felt television could be used more creatively. Discovering the power of short political programs because people could not turn them off, Newton wanted to eliminate the candidate's "earnest" talks to the camera, and, instead, to use film to build the image. He wanted to "market" a candidate.[3] Thus, the "new politics" was born.

There are three factors to the "new politics." First, the proponents of the new school assume that the most effective strategy is grounded in scientific theory and research.[4] In 1958 John Kennedy hired a market research firm to take polls and analyze public opinion in Massachusetts before his senate campaign. In preparation for the Presidency in 1959, he took and analyzed more samples of American public opinion than had ever been attempted in a political campaign.[5]

Second, campaigns reflecting the new politics put more stress on the use of mass media of communication, especially television. The boring political speech of the 1950s is no longer used in telvision coverage; rather, the campaign manager is giving the candidate something to do that can be televised.[6] The emphasis is on the two-minute clip so tens of millions of Americans will see it before they are able to turn the dial.

This audience represents a better cross-section of the public and a more desirable audience for the candidate than any banquet gathering. In 1960, forty-four editions of three network interview programs were devoted to politics. In 1964, there were twenty-eight during the final campaign. This is free time and does not include news specials and documentaries.[7] In 1960 four days before the election Nixon went on ABC for a four hour telethon, estimated to cost between two to six million dollars.[8] The free news coverage is more desirable than commerical coverage. A man whose activities are on the news is more credible. Robert Kennedy maintained that thirty seconds on the evening news was worth more than a story in every newspaper in the world. The Baus and Ross agency regards thirty seconds on news as more valuable than a half-hour paid ad.[9]

Finally, the "new politics" seems to de-emphasize the more traditional forms of appeal in televised messages. The political speech has been sacrificed in favor of spot announcements or "commercials."[10] These short spots keep the politicians happy and do not annoy audiences by interrupting "I Love Lucy." In 1960 Kennedy and Nixon forces produced 9,000 television commercials, and in the same period in 1964, there were 29,300. Sixty percent of the money spent in the general election period went for spot announcements of a minute or less and only 40 percent was spent on program time.[11]

The three elements of the "new politics" evolve to one main process, that is what Carroll Newton suggested when he went to Richard Nixon. The marketing of candidates began.

To determine the significance of party identification in voting behavior today, one must be aware of the frequency of straight-ticket voting and the phenomenon of split-ticket voting. George Gallup revealed that 43 percent of the American voters voted straight ticket in 1968, compared to 61 percent in 1956 and 66 percent in 1952.[12] This evaporating dominance of party identification is being replaced with new priorities. Today when people are asked how they make up their minds about a candidate, the factor in top priority is the candidate, his general ability, his personality, and his ability to handle the job. Second, they will consider the issues, the candidate's stand on the issues and the candidate and party's ability to solve the problems. Only next does party identification enter into the picture, followed by group affiliation.[13] Party power has become fragmented, recently witnessed by the unseating of Mayor Daley and his delegation at the Democratic Convention. The party influence on the voter existent in the first half of the twentieth century has joined the fate of the dinosaur.

The importance of the party identification that does still exist is misunderstood as controlling most votes. A large core of steadfast loyalists does not determine the election. The decisive votes are cast by a minority of manipulated subjects.[14] This results because so many elections are merely offering a choice between Tweedledum and Tweedledee. Such was the case in the last two elections. Thus, there was not a massive conversion vote as was found in the Johnson-Goldwater and Eisenhower-Stevenson elections. The public saw a clear contrast in candidates and the landslide for Johnson called for Republican conversion and the Eisenhower landslide called for Democratic conversion.[15]

John Kennedy's 1960 victory was not accomplished simply by Democratic loyalists; however, it cannot be called massive conversion either. Of Kennedy's 34 million votes, 10 million came from those switched from Republican support in 1956 and another five million from those who did not vote in the previous contest.[16] The conversion originally occurred when Republicans refused to support Goldwater. Actually, the religious issue brought up some conversion from both

sides. Republican catholics voted for Kennedy and Democratic Protestants voted for Nixon. The significant vote, however, came in the crystallizers (the uncommitted but already inclined toward a Democratic candidate.) Kennedy's winning margin of some 113,000 votes came from his winning the crystallized votes,[17] not the sum of the registered Democrats.

The notable, demonstrable phenomenon of ticket-splitting is growing all the time. Millions of voters are picking and choosing among the various party candidates. Some scholars are inclined to judge this as an unmistakable mark of political sophistication of the electorate. They feel television offers a knowledge explosion which lays bare the candidate and the issues; thus, the voter is more selective.[18] Meyer agrees that the independents are most likely to see merit in the programs of both parties, consider rival candidates before making their choice, and in the final voting, most likely to split their tickets.[19] Berelson disputes the explanation of conversion and ticket-splitting: "Those who change political preferences most readily are those who are least interested, who are subject to conflicting social pressures, who have inconsistent beliefs and erratic voting histories."[20] But keeping in mind the conversion of the Democrats in 1952 and Republicans in 1964, it is obvious that not only the disinterested change votes. About half of the voters have supported the opposition party at least once in a presidential election.[21]

It appears that there is no longer a quantitative impact of party identification upon the American voter. It is entirely probable that the demise of this group identification is to be correlated with the increased use of television in political campaigning. This exposure has enabled the individual, in the intimacy of his own living room, to experience vicariously the political arena. The result has been his independence from the authority of the political party.

The influence of group affiliations has earned the position of least impact on the voting behavior in the 1960s. Lazarfield wrote in 1944, "A person thinks, politically, as he is, social characteristics determine political preference."[22] After noting the demise of party influence and the increase of ticket-splitting, it is impossible to apply Lazarfield's theory at face value today. Nimmo writes in 1970, that predispositions instilled during childhood by such socializing agencies as family, school, church and peers are durable and fairly resistant to change; thus, they serve as a defense against any persuasive demands. People tend to expose themselves to communications congenial to their existing attitudes and avoid those which challenge their attitudes. Even if voters are exposed to conflicting communications, they will remember arguments favorable to their own side while filtering or forgetting the opposition.[23] There can be no traces to the mass media for a change in behavior then, because exposure is highly self-selective.[24]

Pomper challenges the significance of this "environmental conditioning." He professes that sociological groups do not determine votes, because they are no more than artificial categories created by researchers for their own purposes of analysis. He contends that an individual may be classified as a worker, but unless he subjectively identifies with the working class, this classification will have little meaning.[25] There is a clear relationship between the public's policy preferences and its votes, and this relationship is stronger than the association of sociological groupings and the vote.[26]

Each view seems to be an extreme. Pomper cannot deny the role of environmental forces on an individual's behavior, however indirect it may be. Also, Lazarfield cannot offer concrete proof that social characteristics always have a direct effect on behavior. It is highly probable that a combination of personal predispositions and personalities of individuals, plus their social ties, the credibility of the sources, the form of the message, and

the media all limit the independent effectiveness of changing attitudes, and through attitudes, behavior.[27]

Marketing. The politicians discovered that the impatient world of television was scornful of tedious campaign rhetoric. When they came to the realization that his medium projected images and impressions better than fact and reasoned argument, Madison Avenue took over. Marketing a presidential candidate is no different than marketing toothpaste. If a television commercial makes one like the images of Crest enough to buy a tube, it is of no great matter if the toothpaste is distasteful, the user can quickly revert to Pearl Drops. But, if a commercial makes a voter like the image of a politician, it may be four or six years before he can get rid of him. A politician is next to impossible to throw away.

The dominant goal of a political broadcast is the promotion of a candidate, not the enlightenment of the voter. This promotion takes its worst form in the thirty second or one minute commercial where political issues are so oversimplified or ignored that the voter is given no information or, worse, misleading information.[28] The commercial image-making is directed to the voters who get all their campaign information from television, the indifferent lower middle class. This *is* the television mass; they make up their minds late and are most subject to influence. Election Research Center reveals the less people care about something, the more easily they believe what they are told about it.[29]

Marketing psychology has become a necessity for campaign strategy. Advertisers marketing a product find out two basic things: What the public wants and what the public can be induced to accept.[30] The public easily lets down its guard to the repetitive commercial and changes its ways of perceiving products. The levels of the mind below consciousness are played upon and conditioned to produce responses which appear much later.[31] It is important that the content of a message or the qualities of a product (candidate) be sufficiently ambiguous so that members of an audience can project into it percepts relevant to their own

cognitive needs.[32] It is possible that the "New Nixon" was a product of changed perception; seen as "shrewd" in 1960, he emerged in 1968 as "credible,' but perhaps no less shrewd.

What is most disturbing about the techniques of marketing a candidate is that the nonachievements can be projected as effectively as the achievements. Governor Endicott Peabody of Massachusetts projected an impressive image on a prepared spot in 1962, (shot eighteen times to get the commercial right). After elected, he bumbled answers during news conferences, and his TV image dropped.[33] A prize example is the film on Senator Clair Engle from California. Even though he was dying in the hospital, his manager shot film and spliced together the "healthy" frames to create a recovered image to his public.[34] He never lived to election day. Governor Rockefeller and Robert Kennedy were promoted by masters of the marketing industry. The 1966 Rockefeller commercials turned the tide on what was expected to be a fateful election.

The commercial appears to be a threatening device to the political integrity of our society. But, psychologists say with political advertising there is a built-in safety valve. When people begin to feel their freedom is being threatened by a massive political advertising campaign, they are likely to react so violently that the campaign can become a serious liability to the candidate.[35] The effects of the sudden commercial assault every four years on the public can be two-fold. First, the new set of symbols is so incongruous with normal experience that it stands out as naked propaganda. Second, up go the voter's defenses against being propagandized.[36] The result is often tune out rather than tune in.

Even though the psychologists may have a sound point, the complacency toward the political commercials is alarming. Their argument is based on an assumption that the voter is more sensible than the advertisers imagine and that each viewer absorbs the commercial through a skeptical eye. The fact remains, large corporations do not spend hundreds of millions of dollars a year

with advertising agencies and television networks without some proof of results. Schlesinger's fears seem valid, "This development can only have the worst possible effect in degrading the level and character of our political discourse... you cannot merchandize candidates like soap and hope to preserve a rational democracy."[37]

Images. The role of television in producing political images has been the subject of many studies since the 1960 Nixon - Kennedy debates. The candidate and his image have become the primary factor in voter selection. Most of the studies contradict Blumler's conclusion, "It is also clear that the measurable contribution of television to the shaping of leader images falls far short of popular expectation."[38]

Gestalt psychology says that if one sees an incomplete circle, he tends to complete it. Applying this to political communications, the voter tries to complete as much as possible a circle between the politician and himself by adding his own impressions and attitudes.[39] The expansive use of television has made the voter part of the circle, because what he hears *and* sees involves him more than what he hears. The voter may be lacking knowledge of this product (candidate) that he sees, but the voter feels he is aware of good and bad in society. The task of political persuasion, then, becomes a matter of communicating values, not logical information. This suggests that political persuasion operates on a basis of images or signs of consubstantiality more than the presentation of facts or arguments or even direct emotional appeals.[40] This correlates the candidate's view of the world with that of the voter. He is voting for his own self-image.

The proponents of Freudian psychology would offer the opinion of a nonpartisan affinity for a father-image candidate. This could be justified by an increasing interest in many levels of government for a more authoritarian and paternalistic government, one featuring a maximum level of security with a minimum level of hazard. This certainly would apply to the election of Johnson over Goldwater. This could also apply to the election of

Kennedy, because after the TV debates, he was seen by both parties as more ambitious, aggressive, striving, active, dynamic, and rebellious. Nixon, in contrast, was seen by members of both parties as less ambitious, more easy-going, contented, passive, relaxed, and conforming.[41] Kennedy certainly paralleled more with the dominant father-image.

Following the Nixon-Kennedy debates there was a plethora of research done on the image-making factors of political campaigns. All research perused by this author agrees on one point: images had an impact on the attitudinal responses of those tested. Most studies do not, however, state that this had a direct effect on the voting behavior. They readily admit no concrete proof can be offered on this point. A brief look at a select variety of these studies will make the reader more cognizant of image impact.

The Tannenbaum study can be summarized by stating there were substantial and significant differences in the direction and magnitude of image change as a result of the first debate between those who saw it on television and those not exposed at all. The non-viewers showed little or random change in the various images, while the viewers changed.[42] On of the main conclusions of the Langs in their study was that "it stands to reason that the debates, which emphasized the give and take between two men, would have their main impact on the images of the candidate's personalities."[43] Carter's study asked which were better portrayed, issues or candidates: 19 percent said candidates; 7 percent said issues; 50 percent said both.[44] There is little doubt from this study and others that the audience was busy analyzing the character of the contestants -- their "presentation of self." White concludes from the surveys that those who heard the debates on the radio saw the candidates as equal; whereas those who saw them, felt Nixon came off poorly.[45] It appears that technology gave the United States a President and John F. Kennedy was right about that "gadget."

Two gubernatorial elections placing a premium on the images of the candidates were those of Ronald Reagan and Nelson Rockefeller. Many

newsmen reported that listening to Reagan speak made it extremely difficult to decide how much depth of knowledge and understanding was beneath the surface of this handsome and apparently intelligent man. At press conferences it was a different matter when he could not draw on pat answers from campaign rhetoric.[46] Selective distortion did not occur in Rockefeller's election of 1958 either. Regardless of political affiliation, voters saw similar images in the candidates. Rockefeller was dynamic and personable, and the universal opinion of incumbant Averell Harriman was that he had a "strained and stiff" image.[47]

One point seems to be unique about personal images of a political candidate that television conveys to its viewers. Recent findings reveal that all viewers tend to see the same personal image of televised candidates although the influence of that image on viewers may vary. According to the predispositions discussed earlier in the paper, this should not happen. This places the critic in a dilemma. Perhaps the answer will emerge as media predisposition is under analysis.

Media Predisposition. Those who contend that political predispositions have significant impact on voting behavior need to consider the integral role of the television set in the American family. The sociological factors of the family perhaps have been replaced or altered by the new addition to the family, namely, the "set." The endless hours of television viewing have created some other mental predisposition that influences the voter to react in a preset way to whatever comes out of their TV set. It is possible that this other mental predisposition is so firmly fixed as to overwhelm and obliterate a partisan distortion of candidate images due to political predispositions.[49] This stronger influence might be called "media predispositions."

To assimilate this stronger influence, one must recognize that television has created its own symbolic language: what one's face looks like or how it corresponds to TV. The television industry has laboriously created stereotypes for good guys and bad guys. This crucial effort is much more sophisticated than the efforts found in the "Shoot 'em up" movies of the 1950s. Television's stereotyped dramatic characters, with

their "invisible visual values" that condition viewers on a year-round, year after year, basis, embody personifications of universally admired or detested characters. This part of the American mind shared by all voters regardless of their political affinities.

All television viewers, whether they admit it or not, would seem to have mental picture galleries in their heads hung with images of lovers, heroes, villians, fathers, stooges, *and* politicians. Using I. A. Richard's "sorting" process, the voter, consciously or unconsciously, matches the images from his gallery to the images of the candidates. Therefore, the moment the television viewer takes his place before his set, he brings with him a series of invisible visual values which have a strong political significance regardless of his conscious drive.[50]

Media predisposition may not only be conditioning of images, but the great preponderance of theatrical entertainment may condition viewers to perceive political campaigns as a theatrical experience. Modern production techniques can create the illusion that a campaign is "political drama." With the image conditioning, the candidates are readily judged as dramatic characters. Reaction shots are so typically a technique of film and TV drama, that their use in news coverage may (1) increase the emotional intensity of the coverage to the point of obsuring rational consideration of the subject matter and (2) increase the illusion that the coverage is drama and not reality.[51] The following studies from the Nixon-Kennedy debates make this apparent.

The study by the Institute for Communication Research at Stanford directed by Richard Carter found that the clash of personalities was what seemed to be the most attractive. Thus, the later debates were liked more because they were considered more "direct, lively, emotional, peppy, spirited." In analysis of the high points in the reactions, the Gallop Poll Hopewell study found that generalized "inspirational" material or effective counterattack far outscored the facts and statistics.[52] There seems to be no doubt that the immediate response was to the drama of the debate. Two of the largest studies placed even more significance on sytle than the factors revealed in previously mentioned studies. Elmo Roper and Associates with a

national sampling of 3,000 argue that style of presentation was more important in their findings than either the content of the presentation (issues) or the personality of the debater (image). The Canadian Broadcasting sample of 4,800 revealed that both personality and style of presentation were important frames of reference and that the issues were rarely mentioned as counting for or against each candidate.[53]

With the influence of media predisposition, the Great Debates could be correlated to voting behavior. What the debates did best was to give the voters a living portrait of two men under stress and let voters decided which style and pattern of behavior under stress they preferred in their leader.[54] The drama critic would not have challenged the outcome of the election. As a result of continued exposure to television, the voter has learned to project characteristics of the television hero to the political hero.[55] It is shocking to conclude that John F. Kennedy may have won on the coolness of Perry Mason, the virility of Ben Casey, the sincerity of Matt Dillon, the enthusiasm of Ozzie Nelson, and the courage of Elliott Ness. If the reader was an avid television fan at that time and media predisposition is a reality, the point becomes alarming.

Issues

In the priorities of ranked impact upon voting, the concern for issues falls in second place today. To look at the strategy of the new politics and to consider television formats widely used in political campaigning, would reveal the projection of issues as a seemingly undesired goal. Short spot announcements and commercials are not conducive to clarifying issues. Even to consider the formats of the longer programs involving panels or debates, one would discover the ninety-second constructive period with a sixty-second rebuttal. Inadequate to offer any depth of analysis. The rigid time-factor of the media or the candidate does not work to the advantage of the voter. However, there is debate as to how effective television is in conveying the issues.

The defenders of television do not deny the image-making; they merely suggest it is only a vehicle in accomplishing the desired projection of the issues. Trenaman writes that the main advantage of a skillfully

contrived program is that it gives the viewer a better opportunity of understanding what the message is about. It is a means to an end, which is the message of the party. The implication here is not that techniques do not matter, but that they are a great deal less important than the selection and shaping of the content.[56] Whether Trenaman is speaking of issues per se or the style of presenting them is unclear.

Pomper supports this theory because he feels to win an electoral majority, a party must devote itself to policies as well as images. Only a relatively small, one sixth, of the voters see no issue content in the parties; 45 percent of the actual voters conceive of the parties in terms of benefits; and another quarter of the electorate judges the parties according to the nature of the times.[57] Professor Key of Harvard suggests the same idea when he says that when voters mark their ballots, they have in their minds the recollections of their experiences in the last four years. This overshadows the last TV political spectacular they viewed. Whether their memories are happy or dissatisfied with the government will be the key influencing factor.[58] This writer found no studies or proof for this position on issues.

Studies mentioned earlier in the paper pointed to the insignificance of issues. The Katz and Feldman studies compliment these earlier findings with their conclusions from the Nixon-Kennedy debates. Viewers had not learned enough from what was said by the candidates to cause any change of opinion on campaign issues, but they had learned about the candidates themselves. They discovered how well each candidate could perform in a debate and they formed images of each candidate's character and abilities.[59] Therefore, the rational import of what candidates say may be a minimal part of the sentiment they arouse in viewers. If the predisposition theory holds true, voters will sift out the information which will bolster and reinforce their own objectives and present attitudes and opinions. Whereas, the exposure to television campaigning may have little or no effect on an actual change in attitude, it still does a great deal to focus attention on one topic or another. It also affects the saliency of different issues.[60]

Another role for the significance of issues is that it is correlated with

the candidate's image. The linked image-issues represents agreement between the attitude toward the voter's candidate and his attitude toward the same issues. The Democrat may have felt his feelings with regard to the issues were similar to those held by Kennedy. However, the religious issue in the 1960 election in the conversion votes most likely reflect predisposition, not linked image-issue. In 1964 the image-issues liked with Goldwater gave Johnson the landslide. The issues were often reduced to negative allegations about Goldwater's personality.[61]

It is obvious none of the studies offer concrete proof of the influence of the issues on the selection of a candidate. But, it appears television does not enhance assimilation of the issues. This leads one to surmise that if issues have impact, they would only be of significant impact to those voters using a multi-media approach to their political awareness. Even this awareness becomes very tenuous when one considers that a political issue does not possess an independent reality like a stock issue in debate, which opponents are obligated to dispute. But issues in politics are personal constructs, existing with varying vitality within each voter.[62] Issues are the most formidable barriers a voter sees to the kind of world he wants. Perhaps it is not that they lack significance, or that they do not influence his behavior, but that he chooses to protect his psyche by not revealing their contribution to his decision.

In Conclusion

The implications of the significant impact of television on political campaigns remain ambiguous. Television perhaps can safely be called a reinforcing agent. Seen as a vehicle for the crystallization of votes, it can make tangible vague trends of public opinion. But television as a molding agent is still debatable. It is not possible to say that isolated TV communications, divorced from the influence of other media and other sources of public opinion, are capable of playing the crucial role in reversing, changing, or shifting the prevailing atmosphere or mood.

Television most closely simulates inimate persuasion between candidate and voter and personal persuasion has been found to be the most effective on voting.[63] But the critic must be skeptical of his conclusions. Merely because television reaches in to the imtimacy of the living room, does not guarantee it to be an intimate medium. Sometimes the audience is the final determinant. When communication is produced for a market rather than a particular audience, this means they are possibly talking and listening more to themselves than they are to an audience. Television coverage is shaped more by the standards of the industry and its professionals than it is by its actual audience and their reactions. Realizing this today, the politician is writing his own material, getting out among the people, and turning to kiss the baby in the mother's arms rather than moving to the camera. The Democratic Convention saw politicians speaking grass roots politics to the people on the floor, not juggling positions to satisfy the cameraman and the television audience.

The evidence seems very weighty from the long list of studies following the Great Debates and undoubtedly "proves" to some readers that television's impact is paramount. But another study should make the public more aware of the actual value in this kind of survey. Roper reported that 44 percent of the voters said the debates influenced their decisions. Five percent, projecting to 3,400,000 voters, ascribed their final vote was based on the debates alone. Of those 3,400,000 voters, 884,000 (26 percent) voted for Nixon and 2,448,000 (72 percent) voted for Kennedy. (Two percent did not reveal their vote.) The Debates, according to these figures, yielded Kennedy a net gain of

1,564,000 votes. This is over thirteen times greater than his winning margin of about 113,000 votes.[64] This reveals there is no final proof from any study that the debates persuaded people to cast their votes in any way. In this electronic age, there is no complete set of after-action reports that can tell just how and why a voter reached his decision. Even if a man does tell why he voted for a candidate, are his reasons necessarily accurate? this is doubtful. Too many factors influence an individual's decision-making and most of them are unmeasurable.

One may assume television and politicans are in a diabolical plot to manipulate the voting populous and that politicians in their competitive arena are not going to eradicate the political facades pressing upon a docile electorate. If the assumption is drawn, then the television masses, the uneducated in our society, the poeple refusing to be saved by the printed media, can only hope that the enlightened voter will come to his rescue. The only choice left will be, in the words of Adlai Stevenson, "Egg-heads of the world unite!"

FOOTNOTES

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